

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Bertin Marc Stuckart, Jr.

Case Number: 20-02561

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Jacksonville, Florida

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant Bertin Marc Stuckart, Jr. (“Claimant”): Kurt Zimmerman, Esq. and Dochter Kennedy, Esq., Westminster, Colorado.

For Respondent UBS Financial Services Inc. (“Respondent”): Omar Perez, Esq., UBS Business Solutions US LLC, Nashville, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: August 11, 2020.

Claimant signed the Submission Agreement: August 10, 2020.

Statement of Answer filed on or about: September 13, 2020.

Respondent signed the Submission Agreement: August 11, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent denied any wrongdoing but did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1141655, 1485417, 1514608, 1515001, and 1621423; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant's request for compensatory damages in the amount of \$1.00 be denied.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On February 16, 2021, Claimant advised that the customers in Occurrence Numbers 1141655, 1485417, 1514608, 1515001, and 1621423 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). On February 22, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Notices. Claimant also filed a copy of the FedEx tracking information available online for the Notices.

On March 29, 2021, Claimant filed a copy of an email submitted by the customer related to Occurrence 1514608 in support of Claimant's request for expungement ("Customer's Email").

The Arbitrator conducted a recorded, telephonic hearing on March 30, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customers also did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1485417, 1514608, 1515001, and 1621423, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the dispute related to Occurrence Number 1141655 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony, Claimant's hearing exhibits, and the Customer's Email.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1141655, 1485417, 1514608, 1515001, and 1621423 from registration records maintained by the CRD for Claimant Bertin Marc Stuckart, Jr. (CRD Number 1281643) with the understanding that, pursuant to Notice to Members 04-16, Claimant Bertin Marc Stuckart, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

With respect to Occurrence Number 1141655, while the customer was an adult, the complaint seems to have been made by her father, who was also Claimant's client. Claimant testified that the customer wanted to put a stop loss order on her mutual fund investments. Claimant explained to her that it was impossible, and the customer agreed. Two years later, after a market decline generally attributed to the terrorist attack of 9/11, the customer's father complained that Claimant did not follow the customer's instruction. The complaint was denied by the firm and no arbitration was filed. There was no evidence to support the father's complaint, which Claimant specifically denied. Further, Claimant would not have benefitted financially by not following the customer's instructions.

With respect to Occurrence Number 1515001, the complaint involved Lehman Brothers Structured Notes ("Notes"). Claimant testified that the investment grade Class A Notes were suitable for the customers' moderately aggressive risk tolerance and comprised 5-10% of their holdings in a diversified portfolio. The bankruptcy of Lehman Brothers, which caused the decline in value of the Notes, could not have been anticipated by Claimant at the time of purchase. In addition, the customers were provided with a preliminary prospectus and client guide prior to purchasing the Notes and a final prospectus after their purchase, which described the terms of the Notes and the potential gains or losses. The customers remained Claimant's clients after reaching a settlement with the firm, until the husband died and the wife moved. No arbitration was filed.

With respect to Occurrence Number 1514608, the customer was an attorney and experienced investor who invested approximately 4% of his portfolio in Lehman Brothers Structured Notes ("Notes"). The investment grade Class A Notes were suitable for the customer. The customer received the preliminary and final prospectuses and client guide. The customer remained Claimant's client after reaching a settlement with the firm, until

the customer's retirement. Further, the customer continued to refer clients to Claimant and supports expungement.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

With respect to Occurrence Number 1485417, the customer's mortgage loan was secured prior to his account being opened with Claimant and his former partner and the investment recommendations to the customer were made by the partner, not by Claimant. Claimant only reviewed the partner's recommendations. The recommendations were suitable for the customer, who was an experienced investor.

With respect to Occurrence Number 1621423, the complaint involved Lehman Brothers Structured Notes ("Notes"). All recommendations to the customer were made by her friend, Claimant's former partner. Claimant never met the customer. When Claimant spoke to the customer on the telephone, she stated that she would rather discuss her account with his partner. The Notes comprised 10-12% of her portfolio and were consistent with her investment objectives. Thus, the Notes were suitable for her. The customer would have received the preliminary prospectus and buyer's guide prior to purchase and a final prospectus after purchase.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$	50.00
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**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	150.00
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Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: December 2, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: March 30, 2021	1 session	

Total Hearing Session Fees	= \$	100.00
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The Arbitrator has assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Richard S. Zaifert

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Richard S. Zaifert

Richard S. Zaifert
Sole Public Arbitrator

04/01/2021

Signature Date

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April 01, 2021

Date of Service (For FINRA Dispute Resolution Services use only)